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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,438

09/14/2005

Harald Albrecht

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EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1796

NOTIFICATION DATE

DELIVERY MODE

05/03/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/523,438	Applicant(s) ALBRECHT ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1796	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: None.
 Claim(s) objected to: None.
 Claim(s) rejected: 21-43.
 Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Lorna M Douyon/
 Primary Examiner, Art Unit 1796

Continuation of 11. does NOT place the application in condition for allowance because: of the same reasons set forth in the final rejection.

With respect to the obviousness rejection based upon Kaneda in view of McAtee, Applicants further argue that the mere fact that the emulsions of Kaneda may contain similar anionic surfactants in the same proportions as recited in present claim 21 apparently does not justify the conclusion that these emulsions and the cleansing preparation of claim 21 necessarily have the same composition.

The Examiner respectfully disagrees with the above arguments because:

"Products of identical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (fed. Cir. 1990). See MPEP 2112.01 II.

Applicants also argue that the Examiner's reliance "to show the relationship of the weight ratio of anionic and nonionic surfactants" do not contain any anionic surfactant but merely one or two nonionic surfactants, i.e., polyoxyethylene sorbitan monostearate (20 E.O.) and in some cases additionally isostearyl glyceryl ether and argues that "aluminum dialkylphosphate" is clearly an example of a metal dialkylphosphate which is taught in paragraph [0023] of Kaneda as an oily thickening agent.

The Examiner respectfully disagrees with the above argument because said aluminum dialkylphosphate of Kaneda also read on "phosphate-type surfactants such as alkylphosphoric acid ester-type surfactants" in paragraph [0020] of Kaneda.

Applicants also argue that McAtee is unable to cure the deficiencies of Kaneda because the mere fact that McAtee mentions both alkoxylated fatty acid esters and alkyl polyglycosides as two of many examples of nonionic surfactants is not sufficient to suggest to one of ordinary skill in the art that these two types of nonionic surfactants are interchangeable, let alone sufficient to one of ordinary skill in the art to combine an alkyl polyglycoside with one or more selected anionic surfactants mentioned in the long list of exemplary anionic surfactants mentioned in paragraph [0020] of Kaneda.

The Examiner respectfully disagrees with the above arguments for the same reasons set forth in the final rejection.

With respect to the obviousness rejection based upon Drucks, Applicants argue that not a single one of the almost 20 exemplified Compositions of Drucks contains two or more different classes of surfactants, let alone a combination of anionic surfactant and nonionic surfactant, and in paragraphs [0034] to [0069] Drucks mentions (considerably) more than 100 examples of specific surfactants and classes of surfactants which may optionally be employed, giving rise to thousands of possible combinations of surfactants, without teaching or suggesting that any combination of different classes of surfactants may result in any advantages which cannot be obtained with a single class of surfactants or any other combination of surfactants

The Examiner respectfully disagrees with the above arguments because a reference is not limited to the working examples, see In re Fracalossi, 215 USPQ 569 (CCPA 1982). Drucks teaches wipes which comprise one or more washing-active surfactants from the group of anionic, cationic, amphoteric and nonionic surfactants (see paragraphs 0032-0069 on pages 2-3) and with respect to the specific surfactants, it is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose, see In re Kerkhoven, 626 F.2d 846,850,205 USPQ 1069, 1072 (CCPA 1980).